

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1614 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NANDLAL HUNDALDAS SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.Samir Dave, A.G.P. for respondents Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. H.R. Prajapati for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 23-12-1998 passed by the respondent no.2-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that the petitioner is involved in the activity of transporting, storing and selling foreign liquor illegally, and as such, criminal case under the Bombay Prohibition Act has been registered against the petitioner vide CR no.556/98 dated 22-12-1998. That the said case is pending investigation.

3. The grounds further indicate that three witnesses on assurance of anonymity supplied information against the petitioner and his alleged activity of bootlegging vide their statement dated 23-12-1998. The anonymous witnesses have stated in respect to incidents dated 30-11-1998, 3-12-1998 and 8-12-1998 respectively. On the basis of said material, the detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That though the petitioner is in police custody, after the remand period is over on application moved by the petitioner, he is likely to be released on bail and continue his nefarious antisocial activity. That enforcement of general law is not likely to prevent the petitioner from continuing his prejudicial activity, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order of detention on numerous grounds. It has been submitted on behalf of the petitioner that representation dated 27-7-1999 addressed to the Minister was received by the concerned authority, however, the request made by the petitioner to supply the statement of witnesses recorded in a criminal case filed against him as well as report of chemical analyser for the material seized in a criminal case against him have not been supplied to him and as apparent from the communication dated 30th August, 1999, the said representation was rejected by the respondent no.1-State.

5. Learned A.G.P. Mr. Samir Dave has referred to and relied on the statement made by the respondent no.2 as deponent in affidavit dated 31st July, 1999 and 19th August, 1999 wherein it has been stated that on receipt of the representation made by the petitioner the Home Department of State Government instructed the respondent

no.2 to provide report of chemical analyser to the petitioner, if in existence, however, the liquor seized from the possession of the petitioner being sealed bottles with foreign made labels, the same have not been sent to the chemical analyser, and as such, report of chemical analyser was not available. That on the basis of the said fact and as the State Government has rejected the representation, communication dated 30th August, 1999 was addressed to the detenu accordingly.

6. The above stated explanation of the learned A.G.P. being insufficient cannot be accepted. It may be noted that in a representation dated 27-7-1999, the petitioner-detenu has specifically asked to supply the statement of witnesses of a case pending investigation. That neither the affidavit dated 31st July, 1999 nor the affidavit dated 19th August, 1999 suggest any explanation as to why such documents have not been supplied to the petitioner-detenu despite demand. That in absence of any reasonable explanation for non supply of such document a logical conclusion has to be reached that on account of non supply of such vital documents, the petitioner-detenu was prevented from making effective representation against his detention which amounts to breach of constitutional imperative under Article 22(5) rendering the continued detention of the petitioner invalid.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 23-12-1998 passed by the respondent no.2-Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner-detenu-Nandlal Hundaldas Sindhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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